MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI

RESPONDENT,

v.

MICHAEL P. VERNON

APPELLANT.

DOCKET NUMBER WD71123

DATE: February 22, 2011

Appeal From:

Buchanan County Circuit Court
The Honorable Daniel F. Kellogg, Judge

Appellate Judges:

Division Three: Cynthia L. Martin, Presiding Judge, James E. Welsh and Gary D. Witt, Judges

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Attorneys:

Shaun J. Mackelprang and James B. Farnsworth, Jefferson City, MO, for respondent.

Alexa I. Pearson, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,

RESPONDENT,

v.

MICHAEL P. VERNON,

APPELLANT.

No. WD71123 Buchanan County

Before Division Three Judges: Cynthia L. Martin, Presiding Judge, James E. Welsh and Gary D. Witt, Judges

On June 18, 2008 at 1:30 a.m., Jessica Holmes heard a noise coming from an unoccupied house across the street from her home. She called police who promptly responded. Police officers approached the house and established a perimeter. They discovered a broken window. Michael Vernon ("Vernon") was then spotted walking toward the house, carrying a bag in a manner that indicated he was trying to avoid being seen. Police stopped Vernon and saw a pry bar sticking out of his bag. Vernon consented to a search of his bag which contained the pry bar, a flashlight, and a pipe cutter. Inside the house police discovered damage in the bathroom and exposed copper pipes. Vernon was arrested and convicted by a jury of one count of possession of burglar's tools in violation of section 569.180. Vernon appeals.

AFFIRMED.

Division Three holds:

In Point One, Vernon argues that the evidence presented at trial was legally insufficient to prove that he was guilty of possession of burglar's tools. Section 569.180 requires, inter alia, proof of the adaptability, design, or common use of the tools for committing or facilitating offenses involving forcible entry into premises. Vernon argues that the pipe cutter does not meet the specifications to be deemed a burglar's tool because it is not adapted designed or commonly used for forcible entry into premises. However, the tool does not need to be especially designed for use by burglars. Because a pipe cutter can be used to further the crime of breaking and entering into a house to steal copper pipe, and there was testimony that tools like this are commonly used for such, then it qualifies as commonly used to facilitate an offense involving forcible entry into premises.

Vernon next argues that the State failed to prove that he intended to use the tools as burglar's tools to make forcible entry into a building. The circumstances here were such that the jury was permitted to infer the requisite burglarious intent. Vernon was apprehended at 1:30 a.m. with a bag containing tools that could be used to enter a house and steal copper piping. Vernon was walking as if he wanted to avoid detection toward a house that had a broken window and

exposed copper pipes. Copper was selling for a high price. It was a permissible inference that Vernon intended to use the tools to commit an unlawful forcible entry. Point one is denied.

In point two, Vernon argues that two pictures of damage to the downstairs bathroom admitted at trial violated his right to due process, a fair trial, and to be tried only for the offense charged because the State could not show the damage occurred on June 18th and the damage was related to an uncharged crime, prejudicing Vernon. The caretaker of the abandoned house inspected the premises the day following Vernon's arrest and found damage to the downstairs bathroom which he had never noticed before, including a hole exposing copper piping. Vernon's argument that someone else could have done it between the time of his arrest and the inspection the following day goes to weight of the evidence, not whether it was admissible. Also, Missouri courts recognize that exceptions exist for the admission of evidence of uncharged crimes that are part of the circumstances or sequence of events surrounding the offense charged. Such is the case here. Point two is denied.

Opinion by: Gary D. Witt, Judge February 22, 2011

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